

### **REMARKS**

Applicants have considered the nonfinal Office Action of August 25, 2010. Claims 1, 4, 18, 31, and 44 are amended. Claims 3, 9, and 10 are cancelled. Claims 1, 7-8, 11, 12, 16-18, 20, 21, 27, 30-35, 38, 39, and 41-49 are pending. Reconsideration is requested.

Claim 4 is amended to maintain antecedent basis with claim 1. Claim 18 has been amended to clarify that the compression members are of the same structure. These amendments do not change the scope of the claims.

Claims 1, 3, 5-10, 16-18, 21, 27, and 30 were rejected under 35 U.S.C. 102(b) as allegedly being anticipated by Jacobsen (U.S. Patent No. 6,530,934). Applicants traverse the rejection.

The Examiner referred to Figure 11 of Jacobsen as teaching a fastener comprising a compression member with an angled surface and a tensioning member.

The present application describes two different embodiments of a fastener. Applicants have amended independent claims 1, 31, and 44 to refer to the embodiment shown in Figures 1-18 and 24-38, where the compression member is a one-piece hollow tube. This structure differs from that of Jacobsen, which is described as a linear sequence of miniature beads joined by a flexible filament. Thus, the claims are not anticipated.

Applicants request withdrawal of the § 102(b) rejection.

Claims 31-35, 38, 39, and 41-49 were rejected under 35 U.S.C. 102(b) as allegedly being anticipated by Gardiner (U.S. Patent No. 6,607,541). Applicants traverse the rejection.

According to the Examiner, Gardiner disclosed the method of using a fastener (20) having a compression member (26) and a tensioning member (34). In this regard, the compression member (26) is always described by Gardiner as being a coil. The present amendment to the independent claims requires the compression member to be a one-piece hollow tube with compression features. This structure does not cover a coil.

Applicants request withdrawal of the § 102(b) rejection.

Claims 4, 11, 12, and 20 were rejected under 35 U.S.C. 103(a) as allegedly being obvious over Jacobsen. Applicants traverse the rejection.

Initially, these are all dependent claims. Jacobsen does not render obvious the present structure of independent claim 1, which requires a one-piece hollow tube. Thus, these claims may obtain their patentability from the independent claim. See MPEP § 2143.03; *In re Fine*.

Applicants contest the Examiner's reasoning against claim 4. The Examiner stated that detection devices are well known in the art for tracking, positioning, and deploying medical devices within the body. Applicants disagree. In this regard, please note that in claim 4, the detection device is used to detect the location of the various parts of the compression member relative to each other, and not to determine the location of the fastener within the body. Applicants request that an appropriate reference be cited by the Examiner to show this is well known.

In addition, the Examiner's reasoning regarding claims 11, 12, and 20 is incorrect. The Examiner reasoned that these are various means of applying tension, which indicates that they are obvious variations. This is improper reasoning because, at most, this means that these three claims are obvious over each other, not over the cited prior art. The Examiner cannot cite Applicants' own disclosure against the present claims; this would be improper hindsight reasoning.

The two cited references, Jacobsen and Gardiner, did not appear to disclose the claimed temperature sensitive element, variable volume element, or piezo electric device being used to change the tension. The Examiner has not shown that using such elements or devices to change tension is well known in the art. Thus, these three claims are not obvious over Jacobsen.

Applicants request withdrawal of the § 103(a) rejection.

**CONCLUSION**

For the reasons detailed above, it is respectfully submitted all claims remaining in the application (Claims 1, 7-8, 11, 12, 16-18, 20, 21, 27, 30-35, 38, 39, and 41-49) are now in condition for allowance.

Respectfully submitted,

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